PART IV

Section—1—A

CENTRAL BILLS AND REPORTS OF SELECT COMITTEES THEREON

LAW SECRETARIAT

NOTIFICATION.

No. LAW 21 LCA 67 Bangalore, dated 17th June 1967.

Ordered that the Report of the Select Committee of the Rajya Sabha on the Indian Penal Code (Amendment) Bill, 1967 which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 22nd May 1967, be published in the Mysore Gazette, for general information.

By Order and in the name of the Governor of Mysore,

255 B. Ramachandra Rao, *Under Secy.*

RAJYA SABHA

The followion report of the Select Committee of the Rajya Sabha on the Bill further to amend the Indian Penal Code was presented to the Rajya Sabha on the 22nd May, 1967 :—

COMPOSITION OF THE SELECT COMMITTEE

MEMBERS

1 Shri Akbar Ali Khan—*Chairman.*
2 Shri M. P. Bhargava
3 Pandit S. S. N. Tankha
4 Shri Arjun Arora
5 Shri M. M. Dharia
6 Shri Bhupesh Gupta
7 Shri Mulka Govinda Reddy
1 Shri Dahyabhai V. Patel
9 Shri K. K. Shah
10 Shri P. K. Kumaran
11 Shri Jaisukhlal Hathi
12 Shri A. D. Mani
13 Shri Sitaram Jaipuria
14 Diwan Chaman Lall
15 Shri D. P. Karmarkar.

REPRESENTATIVES OF THE MINISTRIES

MINISTRY OF LAW

Shri S. K. Maitra, Additional Legislative Counsel.

MINISTRY OE HOME AFFAIRS

Shri S. S. Varma, Deputy Secretary
Shri G. S. Kapoor, under Secretary

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary
Shri S. P: Ganguly, Deputy Secretary
Shri Amar Nandi, Under Secretary

REPORT OF THE SELECT COMMITTEE

I, the Chairman of the Select Committee to which the Bill* further to amend the Indian Penal Code was referred, having been authorised to submit the Report on their behalf, present this their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Rajya Sabha on the 3rd May, 1963. On the 26th February, 1965, the House adopted a motion for the circulation of the Bill for eliciting opinion thereon by the 31st December, 1965. The motion for reference of the Bill to a Select Committee of the House was moved on the 19th August, 1966 by Diwan Chaman Lall and was adopted by the House on the same day (Appendix I).

3 The Committee held thirteen sittings in all.

4. The Committee decided that in view of the fact that the Indian Penal Code (Amendment) Bill, 1963, had already been circulated for eliciting public opinion, no press communique need be issued inviting memoranda etc., from the public. The Committee, however, decided to invite some expert witnesses to give oral evidence before the Committee on the various aspects of the Billl and accordingly heard the evidence tendered by seventeen individuals. (Appendix II).

5. The Committee decided that the whole of the evidence tendered before them be laid on the Table of the House.

6. The Report of the Committee was to be presented on the 7th November, 1966. The Committee was, however, granted extension of time first upto the 18th March, 1967 and then again upto the 22nd May, 1967.

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* Published in Part II, Section 2 of the Gazette of India Extraordinary dated the 3rd May, 1963.

7. The Committee considered the Bill clause by clause at their sitting held on the 5th May, 1967 and adopted their Report on the 20th May, 1967.

8. The Committee also held three sittings in Bombay from the 24th April to 26th April, 1967 with the permission of the Chairman.

9. Before dealing in detial with the charges made in the Bill, the Committtee wish to draw attention to the reasons which necessitated alterations in the proposed legislation.

10. The Bill as introduced in the House seeks to give protection to publications and objects which are meant for public good or for *bona-fide* purposes of science, literature, art or any other branch of learning. It also contains provision enabling the Law Courts to admit as evidence the opinion of experts regarding the obscenity or otherwise of the publication or the object concerned. The idea as the Committee could gather was to liberalise the law in the country in regard to publications and objects of the kind referred to above and to bring it in conformity with similar laws in other countries. However, several members of the Committee and distinguished persons who were called as witnesses stressed that while liberalising the law of obscenity in favour of works of science, literature and art, sufficient care should be taken so that flood-gates are not opened for obscene publications and objects masquerading under the name, and in the guise of works of science, literature and art. With a view to making the existing law more definite the Committee thought it advisable to define the concept of 'obscenity' based on certain standards and principles laid down by the Law Courts during all these years. The Committee have, therefore, inserted in the Bill itself a provision which explains the connotation of the expression 'obscenity'.

The Committee have also taken the opportunity to tighten up the law relating to the publication of obscene matters or objects by providing for deterrent punishments.

11. The principal changes suggested by the Committee in the Bill and the reasons therefor are set out in the succeeding paragraphs:

Clause 2

Sub-clause (a) (new): As already pointed out, the new sub-clause is designed to explain the connotation of the expression 'obscenity'.

Sub-clause (b)

Para (i) (new): The Committee felt that in order to make the law relating to the publication of abscene matters or objects deterrent, it was necessary to enhance the punishment provided in section 292 of the Indian Penal Code. The Committee have, therefore, increased the punishment to:

(i) in the case of first conviction, imprisonment of either description for a term which may extend to two years and with a fine which may extend to two thousand rupees : and

(ii) in the case of a second or subsequent offence, imprisonment which may extend to five years and fine which may extend to five thousand rupees.

Necessary provision has been made in the para.

Para (ii) (original clause 2) : Original clause 2 purported to be an exception to the provisions contained in sections 292 and 293 of the Indian Penal Code. The Committee felt that it would be more appropriate to incorporate the principal underlying the original clause in the existing Exception to Section 292 of the Indian Penal Code. [Sub-para (*a*)].

The Committee also felt that any representation sculptured, engraved or painted on or in any ancient monument should be exempted from the provisions of Section 292 of the Indian Penal Code. [Sub-para (*b*)].

The para has, therefore, been redrafted accordingly.

The proviso to the original clause 2 was omitted as Section 45 of the Indian Evidence Act, 1872, gives ample

power to the Court to call for expert opinion in the event of any dispute arising in the matter.

In view of the reasons stated above, consequentia increase in the quantum of punishment provided in section 293 of the Indian Penal Code has been made. [Sub-para (*c*).]

Clause 3 (*new*)

Para (*a*)—The Committee felt that the law relating to the matter should be strengthened, not only by enhancing the punishments provided for the offence, but also by making provision for the forfeiture of obscene matters and objects. To secure this objective, the Committee have amended Section 99-A of the Code of Criminal Procedure, 1898.

Para (*b*)—Since it is very difficult to determine what is, and what is not, obscene and since the decision depends on the maturity, experience and education of the person deciding the matter, the Committee felt that the responsibility for the trial of offences under Section 292 or 293 of the Indian Penal Code should be given to judicial officers of sufficient maturity and seniority. The Committee were, therefore, of the view that the offences under both the sections should be made exclusively triable by the Court of Session. Necessary amendments have been made in Schedule II to the Code of Criminal Procedure, 1898.

Clause 1, *Enacting Formula and the Title*

The amendments made are formal and of a drafting nature.

12. The Committee recommend that the Bill, as amended, be passed.

Akbar Ali Khan,
Chairman of the Select Committee

New Delhi.
May 20, 1967.

Bill No. IV-B of 1963.

THE INDIAN PENAL CODE (AMENDMENT) BILL, 1967

[As reported by the Select Committee]

(Words underlined or sidelined indicate the Amendments suggested by the Committee)

A

BILL

further to amend the Indian Penal Code and to provide for matters incidental thereto

E it enacted by Parliament in the Eighteenth Year of Republic of India as follows :—

1. **Short title.**—(1) This Act may be called the Indian Penal Code (Amendment) Act, 1967.

2. **Amendment of section 292 of Act 45 of 1860.**—In the Indian Penal Code,—

(*a*) section 292 shall be re-numbered as sub-section (2) thereof and before sub-section (2), as so re-numbered, the following sub-section shall be inserted, namely :—

"(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it." ;

(*b*) in sub-section (2) of section 292, as so re-numbered,—

(*i*) for the words "with imprisonment of either description for a term which may extend to three months, or with fine, or with both", the words "on first conviction with imprisonment of either description for a term which may extend to two years and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years and also with fine which may extend to five thousand rupees" shall be substituted;

(*ii*) for the Exception, the following Exception shall be substituted, namely :—

"Exception—This section does not extend to—

(*a*) any book, pamphlet, paper, writing, drawing, painting, representation or figure—

(*i*) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or of other objects of general concern, or

(*ii*) which is kept or used *bona fide* for religious purposes;

(*b*) any representation sculptured, engraved, painted or otherwise represented on or in —

(*i*) any ancient monument within the meaning of the Ancient Monuments, and Archaeological Sites and Remains Act, 1958, (24 of 1958) or

(*ii*) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.";

(*c*) in Section 293 for the words "with imprisonment of either descriptio . for a term which may extend to six months. or with fine, or wit·· both", the words "on first c nviction wi·h imprisonment of either description for a erm which (may ex ·nd to three years and wi·h fine which mav extend t· tw ·th ousand rupe·s a·d in th· ve·t of second or sub·sequent conviction, with imprisonment of either description for a te rm which may extend to seven year an also with fin· w ich m·y ex·nd t· fiv· hous·nd rup··s" shall e substituted

II. 3. Insertion f new clause 3. *Amendment of section 99A and Schedule II of Act 5 of 1898.* In the Code of C i inal Procedure, 1898, (5 of 1898 in sub-s·c·i·n (*i*) of s·ction 99A,—

(*i*) for the w rds "seriti us matter" the words "seriti us or obscene matter", and

(*i*) for the words "punishable u·der section 124A or section 153A or section 295A", the w·rds punishable u der section 124A or sect·i n 153A or section 292 or section 293 r section 295A".

shall be substituted ;

(*a*) in Schedule I for the entries relating t· sectio·s 292 and 293 of h Indian Penal Code, the ·ollowi·g ·ntries hall be substituted, namely :—

1	2	3	4	5	6	7	8
292	Sale, etc., of obscene books, etc.	May arrest without warrant.	Warrant	Bailable	Not compoundable.	On first conviction with imprisonment of either description for a term which may extend to two years and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years and also with fine which may extend to five thousand rupees,	Court of Session.
293	Sale, etc., of obscene objects to young persons.	May arrest without warrant	Warrant	Bailable	Not compoundable	On first conviction with imprisonment of either description of a term which may extend to three years and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to five thousand rupees."	Court of Session.

B. N. BANERJEE,
Secretary.